

No. 16047 ✓

United States
Court of Appeals
for the Ninth Circuit

COLUMBIA IRRIGATION DISTRICT, a cor-
poration, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATE OF WASHINGTON, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeals from the United States District Court for the
Eastern District of Washington,
Southern Division

FILED

OCT 23 1958

PAUL P. O'BRIEN, CLERK

United States
Court of Appeals
for the Ninth Circuit

VS.

VS.

UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Appeals from the United States District Court for the
Eastern District of Washington,
Southern Division

INDEX

[Clerk's Note: When deemed likely to be of an important nature, *errors* or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended Complaint	5
Exhibit A—Description of Lands—Parcels I, II and III.....	10-54
Appeal:	
Bond for Costs on.....	83
Certificate of Clerk to Transcript of Rec- ord on	85
Designations of Record on.....	89-90
Notices of Appeal.....	82, 84
Statement of Points on (USCA).....	87-88
Bond for Costs on Appeal.....	83
Certificate of Clerk to Transcript of Record...	85
Complaint	3
Amended	5
Designation of Record on Appeal (USCA):	
Columbia Irrigation District.....	89
State of Washington—Same as Above.....	89

ii.

Findings of Fact and Conclusions of Law—	
Parcel II	76
Judgment—Parcel II	80
Exhibit A—Parcel II Land Description, Set Out at Pages.....	19-52
Names and Addresses of Attorneys.....	1
Notice of Appeal:	
Columbia Irrigation District.....	82
State of Washington.....	84
Statement of Points on Appeal (USCA):	
Columbia Irrigation District.....	87
State of Washington—Same as Above.....	87
Transcript of Proceedings of February 17, 1958	55



NAMES AND ADDRESSES OF ATTORNEYS

JAMES LEAVY,
P. O. Box 673,
Pasco, Washington,
Attorney for Appellant, Columbia
Irrigation District.

E. P. DONNELLY,
Assistant Attorney General,
Temple of Justice,
Olympia, Washington,
Attorney for Appellant, State of
Washington.

PERRY W. MORTON,
Assistant U. S. Attorney General,

ROGER P. MARQUIS,
HAROLD S. HARRISON,
Attorneys, Department of Justice,
Washington 25, D. C.,

RONALD R. HULL,
Assistant U. S. Attorney,
Federal Building,
Yakima, Washington,
Attorneys for Appellee, United States
of America.



United States District Court, Eastern District
of Washington, Southern Division

Civil Action No. 765

UNITED STATES OF AMERICA, Plaintiff,

vs.

3,479.73 ACRES OF LAND, MORE OR LESS,
IN BENTON COUNTY, WASHINGTON;
COLUMBIA IRRIGATION DISTRICT, a
municipal corporation; STATE OF WASH-
INGTON; and UNKNOWN OWNERS,

Defendants.

COMPLAINT

1. This is an action of a civil nature brought by the United States of America for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved April 24, 1888 (33 U.S.C. 591), the Act of Congress approved March 1, 1917, as amended, (33 U.S.C. 701 et seq.), the Act of Congress approved October 13, 1949 (Public Law 355—81st Congress) and the Act of Congress approved September 6, 1950 (Public Law 759—81st Congress), which two last-mentioned acts appropriated funds for such taking.

3. The use for which the property is to be taken is for a river improvement for the purposes of navigation, flood control and other purposes incident thereto.

4. The interest to be acquired in the property is all right, title and interest of the Columbia Irrigation District in and to said property.

5. The property taken is described in Exhibit "A" hereto attached.

6. The persons having or claiming an interest in the property whose names are ascertainable by a reasonably diligent search of the records and those whose names have otherwise been learned are:

Columbia Irrigation District, a municipal corporation; State of Washington. [1]*

7. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and such persons are made parties to the action under the designation "Unknown Owners".

Wherefore the plaintiff demands judgment that the property be condemned and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper.

/s/ HARVEY ERICKSON,
United States Attorney,

/s/ HART SNYDER,
Special Attorney, Department
of Justice,
Attorneys for Plaintiff.

* Page numbers appearing at bottom of page of Original Transcript of Record.

Trial by jury of the issue of just compensation is demanded by plaintiff.

/s/ HARVEY ERICKSON,

United States Attorney,

/s/ HART SNYDER,

Special Attorney, Department
of Justice. [2]

[Endorsed]: Filed December 23, 1952.

United States District Court, Eastern District
of Washington, Southern Division

Civil Action No. 765

UNITED STATES OF AMERICA, Plaintiff,

vs.

3,479.73 ACRES OF LAND, MORE OR LESS,
IN BENTON COUNTY, WASHINGTON:
COLUMBIA IRRIGATION DISTRICT, a
municipal corporation, J. R. AYERS and
ALICE B. AYERS, his wife, WILLIAM J.
EAKIN, JR. and JANE DOE EAKIN, his
wife, LULA F. LIGHTHIZER and JOHN
DOE LIGHTHIZER, her husband, HER-
BERT A. HOVER and MATA C. HOVER,
his wife, STATE OF WASHINGTON, BEN-
TON COUNTY, WASHINGTON, a municipal
corporation, and UNKNOWN OWNERS,

Defendants.

AMENDED COMPLAINT

1. This is an action of a civil nature brought by

the United States of America for the taking of property under power of eminent domain and for the ascertainment and award of just compensation to the owners and parties in interest.

2. The authority for the taking is the Act of Congress approved April 24, 1888 (33 U.S.C. 591), the Act of Congress approved March 1, 1917, as amended (33 U.S.C. 701 et seq.), the Act of Congress approved October 13, 1949, (Public Law 355—81st Congress) and the Act of Congress approved September 6, 1950 (Public Law 759—81st Congress), which two last mentioned acts appropriated funds for such taking.

3. The use for which the property is to be taken is for a river improvement for the purposes of navigation, flood control and other purposes incident thereto.

4. The interests to be acquired in the property are as follows:

a. The fee simple title to the lands in Parcel I, consisting of Tracts F-307, F-320, G-362, H-400, H-404, H-427, H-428, H-429, S-1367, F-321, G-364, H-431 and J-484, subject, however, to existing easements [23] for public roads and highways, for public utilities, for railroads and pipe lines.

b. All right, title and interest of the Columbia Irrigation District in and to the lands in Parcel II, consisting of Segments F, G, H, J, K, L, P, Q, R, S, and T.

c. A perpetual easement and right of way, subject to existing easements for public roads and high-

ways, public utilities, railroads, and pipe lines, to overflow, inundate, saturate, percolate and erode Tract K-538E in Parcel III, with the natural flow of the Columbia River, or the pool created by the present construction of the McNary Dam, or flows resulting from any other cause whatsoever, including flow from any other upstream dam, together with the right to clear and remove natural or artificial structures or obstructions as may be considered necessary by the representative of the United States in charge of the construction, operation, and maintenance of the project, reserving to the owner and its assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby taken provided that no structures for human habitation shall be constructed or maintained on the described lands and provided further that the written consent of the representative of the United States in charge shall be obtained for the type and location of any structures and/or appurtenances thereto now existing or to be erected on said land.

d. A perpetual easement and right of way over Tract K-666E in Parcel III to construct, maintain, repair, operate, patrol, replace and/or remove a drainage ditch together with the right to trim, cut, fell and remove all trees, underbrush, vegetation, structures, obstacles and/or other obstructions within the limits of the right of way.

5. The property so to be taken is described in Exhibit A attached hereto and made a part hereof.

6. The persons having or claiming an interest in the property whose names are ascertainable by a reasonably diligent search of the records and [24] those whose names have otherwise been learned are:

Parcel I.

Tracts F-307, G-362, H-400, H-404, H-427, H-428, H-429, and S-1367:

Columbia Irrigation District, a municipal corporation, Benton County, Washington, a municipal corporation, State of Washington.

Tracts F-320 and F-321:

Columbia Irrigation District, a municipal corporation, J. R. Ayers and Alice B. Ayers, his wife, William J. Eakin, Jr. and Jane Doe Eakin, his wife, Lula F. Lighthizer and John Doe Lighthizer, her husband, Benton County, Washington, a municipal corporation, State of Washington.

Tract G-364:

Columbia Irrigation District, a municipal corporation, J. R. Ayers and Alice B. Ayers, his wife, Herbert A. Hover and Mata C. Hover, his wife, Benton County, Washington, a municipal corporation, State of Washington.

Tracts H-431 and J-484:

Columbia Irrigation District, a municipal corporation, J. R. Ayers and Alice B. Ayers, his wife, Benton County, Washington, a municipal corporation, State of Washington.

Parcel II.

Segments F, G, H, J, K, L, P, Q, R, S, and T:

Columbia Irrigation District, a municipal corporation, State of Washington.

Parcel III.

Tracts K-666E and K-538E:

Columbia Irrigation District, a municipal corporation, Benton County, Washington, a municipal corporation, State of Washington.

7. In addition to the persons named, there are or may be others who have or may claim some interest in the property to be taken, whose names are unknown to the plaintiff and such persons are made parties to the action under the designation "Unknown Owners".

Wherefore the plaintiff demands judgment that the property be condemned [25] and that just compensation for the taking be ascertained and awarded and for such other relief as may be lawful and proper. [26]

/s/ WILLIAM B. BANTZ,
United States Attorney,
/s/ DALE M. GREEN,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Trial by jury of the issue of just compensation is demanded by plaintiff.

/s/ WILLIAM B. BANTZ,
United States Attorney,
/s/ DALE M. GREEN,
Assistant U. S. Attorney.

EXHIBIT "A"

The land which is the subject matter of this proceeding aggregates 3,425.71 acres, more or less, of which 132.42 acres, more or less, constitutes Parcel I, which is being acquired in fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipe lines; 3,292.71 acres, more or less, constitutes Parcel II, as to which all right, title and interest of the Columbia Irrigation District are being acquired; and 0.58 acres, more or less, constitutes Parcel III, over which easement rights are being acquired, all situate and being in the County of Benton, State of Washington.

PARCEL I

Tract F-307

All of the following described parcels of land lying in Section 17, Township 7 North, Range 31 East of the Willamette Meridian in Benton County, Washington, to-wit:

Beginning at a point on the east line of the Spokane, Portland and Seattle Railway Company's right-of-way 50 feet southerly from the point of intersection of said east line of the right-of-way with the north line of said Section 17; thence east 225 feet; thence southerly, parallel with the said east line of the railway right-of-way a distance of 626.36 feet; thence west 225 feet to the said east line of the right-of-way; thence northerly along said east line to the point of beginning.

Also, beginning at a point on the east line of the

Exhibit "A"—(Continued)

Spokane, Portland, and Seattle Railway Company's right-of-way 676.36 feet southerly from the point of intersection of the east line of the right-of-way with the north line of said Section 17; thence southerly along the east line of the right-of-way to a point that is 1,000 feet distant north from the east and west center line of said Section 17; thence east to the Columbia River; thence northerly along said river to a point due east of the point of beginning; thence west to the point of beginning.

Also, the south 1,000 feet of that portion of Government Lot 2 in said Section 17, lying east of the east right-of-way line of the Columbia Irrigation District canal. [27]

There is excepted therefrom the right-of-way of the Spokane, Portland and Seattle Railway Company.

The tract of land above described contains 22.3 acres, more or less.

Tract F-320

A strip of land 125 feet in width, being 62.5 feet on each side of the center line of the Columbia Irrigation District Canal as now constructed over and across Government Lot 3 and that portion of Government Lot 2 lying east of the northerly extension of the west line of said Government Lot 3, all in Section 17, Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington.

Exhibit "A"—(Continued)

The tract of land above described contains 4.1 acres, more or less.

Tract G-362

Lots 1, 2 and 3 in Block A, Hover Orchards, according to plat thereof recorded in Volume 1 of Plats, page 42, records of Benton County, Washington.

The tract of land above described contains 0.28 of an acre, more or less.

Tract H-400

Lots 1 to 32, inclusive, of Block 4; Lots 1 to 32, inclusive, of Block 5; Lots 1 to 16, inclusive, of Block 6; Lots 1 to 16, inclusive, of Block 7; all in the Town of Hover, according to the plat thereof recorded in Volume 1 of Plats, page 41, records of Benton County, Washington.

Also Lots 17 to 32, inclusive, of Block 6; Lots 1 to 16, inclusive, of Block 11, all in First Addition to Hover, according to the plat thereof recorded in Volume 1 of Plats, page 44, records of Benton County, Washington.

Also Tracts 10, 11, 13, 14 and 16; all in Assessor's Plat No. 6, according to plat thereof recorded in Volume 2 of Plats, page 77, records of Benton County, Washington.

The tract of land above described contains 26.20 acres, more or less. [28]

Exhibit "A"—(Continued)

Tract H-404

Lots 15 to 24, inclusive, of Block 14; Lots 7 to 12, inclusive, of Block 15; and Tracts 46, 47 and 48; all in First Addition to Hover, according to the plat thereof recorded in Volume 1 of Plats, page 44, records of Benton County, Washington.

Also, Tracts 17 and 18; and all of Tract 12, excepting that portion thereof described as follows:

Beginning at the northwest corner of said Tract 12; thence south 430 feet; thence east 50 feet; thence south 174 feet; thence east to the west right-of-way line of the Spokane, Portland and Seattle Railway Company; thence northwesterly along said right-of-way line to the north line of said Tract 12; thence west 350 feet to the point of beginning.

The said Tracts 12, 17 and 18 are in Assessor's Plat No. 6, according to plat thereof recorded in Volume 2 of Plats, page 77, records of Benton County, Washington.

The tract of land above described contains 12.39 acres, more or less.

Tract H-427

All of Tract 8 in Assessor's Plat No. 6, according to plat thereof recorded in Volume 2 of Plats, page 77, records of Benton County, Washington.

The tract of land above described contains 1.34 acres, more or less.

Tract H-428

All of Tract 19 in Assessor's Plat No. 6, according to plat thereof recorded in Volume 2 of Plats,

Exhibit "A"—(Continued)

page 77, records of Benton County, Washington.

The tract of land above described contains 0.07 of an acre, more or less.

Tract H-429

All that portion of Tract 3 in Assessor's Plat No. 6, according to plat thereof recorded in Volume 2 of Plats, page 77, records of Benton County, Washington, lying between the north line of Second Street extended and the south line of Second Street extended.

The tract of land above described contains 0.54 of an acre, more or less. [29]

Tract S-1367

A tract of land lying in the southeast quarter of Section 23, Township 9 North, Range 28 East of the Willamette Meridian, Benton County, Washington, said tract being more particularly described as follows:

Beginning at a point on the northerly line of the right-of-way of the Main Canal of the Columbia Irrigation District, which point bears North $44^{\circ} 30'$ West from the southeast corner of said Section 23 a distance of 614 feet; thence north 530 feet; thence North $71^{\circ} 41'$ West 2077.8 feet; thence South $28^{\circ} 10'$ West to a point on the northerly right-of-way line of said canal; thence southeasterly along the northerly right-of-way line to the point of beginning.

There is excepted therefrom any portion lying

Exhibit "A"—(Continued)

within the right-of-way of the State Highway No. 3.

The tract of land above described contains 12.2 acres, more or less.

Tract F-321

A tract of land being all that portion lying within the right-of-way of the Main Canal of the Columbia Irrigation District, lying over and across the west half of Section 17, Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington, said tract being a strip of land 125 feet in width throughout its entire length, lying westerly and measured at right angles from a line described as follows:

Beginning at a point on the north line of said Section 17, which point lies east, a distance of 9.76 chains from the northwest corner thereof; thence South $44^{\circ} 20'$ East, 4.00 chains; thence South $35^{\circ} 15'$ East, 13.00 chains; and thence South $41^{\circ} 20'$ East, a distance of 30.00 chains, more or less, to a point on the north and south center line of said Section 17, and the Point of Terminus of the above described line.

The tract of land above described contains 8.9 acres, more or less.

Tract G-364

A tract of land being all that portion lying within the right-of-way of the Main Canal of the Columbia Irrigation District, lying over and across the southeast quarter of Section 7 and the southwest

Exhibit "A"—(Continued)

quarter of Section 8, all in Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington, said tract being a strip of land 125 feet in width throughout its entire length, lying westerly and measured at right angles from a line described as follows: [30]

Beginning at a point on the north line of the said southeast quarter of Section 7, which point lies west, a distance of 11.49 chains from the northeast corner thereof; thence by the following courses and distances:

South 35° 30' West, 3.78 chains;

South 25° 00' East, 10.00 chains;

South 7° 00' East, 7.80 chains;

South 41° 40' East, 13.00 chains;

and thence South 44° 20' East, a distance of 14.00 chains, to a point on the south line of the said southwest quarter of Section 8, which point lies east, a distance of 9.76 chains, from the southwest corner thereof, and the Point of Terminus of the above described line.

The tract of land above described contains 9.2 acres, more or less.

Tract H-431

A tract of land being all that portion lying within the right-of-way of the Main Canal of the Columbia Irrigation District, lying over and across the northeast quarter of Section 7, Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington, said tract being a

Exhibit "A"—(Continued)

strip of land 125 feet in width throughout its entire length, lying westerly and measured at right angles from a line described as follows:

Beginning at a point on the north line of the said northeast quarter of Section 7, which point lies west, a distance of 19.51 chains, from the northeast corner thereof; thence by the following courses and distances:

South $38^{\circ} 00'$ East, 17.34 chains;

South $26^{\circ} 15'$ East, 7.00 chains;

South $11^{\circ} 30'$ East, 6.00 chains;

South $16^{\circ} 00'$ West, 5.00 chains;

South $48^{\circ} 20'$ West, 4.52 chains;

and thence South $23^{\circ} 20'$ West, a distance of 6.25 chains, to a point on the south line of the said northeast quarter, which point lies west, a distance of 11.49 chains, from the southeast corner thereof, and the Point of Terminus of the above described line.

The tract of land above described contains 8.7 acres, more or less. [31]

Tract J-484

A tract of land being all that portion lying within the right-of-way of the Main Canal of the Columbia Irrigation District, lying over and across Section 1 in Township 7 North, Range 30 East of the Willamette Meridian, and Section 6 in Township 7 North, Range 31 East of the Willamette Meridian, all in Benton County, Washington, said tract being a strip of land 125 feet in width throughout its

Exhibit "A"—(Continued)

entire length, lying westerly and measured at right angles from a line described as follows:

Beginning at a point on the north line of said Section 1, which point lies west, a distance of 16.88 chains, from the northeast corner of the northwest quarter of the northeast quarter of said Section 1; thence over and across said Section 1 by the following courses and distances:

South $4^{\circ} 30'$ East, 3.00 chains;
South $75^{\circ} 30'$ East, 7.00 chains;
South $40^{\circ} 00'$ East, 7.00 chains;
North $85^{\circ} 00'$ East, 5.50 chains;
South $49^{\circ} 00'$ East, 9.00 chains;
South $63^{\circ} 00'$ East, 10.44 chains;

and thence South $50^{\circ} 00'$ East, a distance of 5.28 chains, to a point on the section line common to Section 1 of said Township and Range and Section 6 of said Township and Range; thence over and across said Section 6 by the following courses and distances:

South $53^{\circ} 00'$ East, 19.15 chains;
North $71^{\circ} 05'$ East, 7.00 chains;
South $82^{\circ} 00'$ East, 11.00 chains;
South $39^{\circ} 00'$ East, 13.00 chains;
South $7^{\circ} 40'$ East, 14.45 chains;
South $48^{\circ} 15'$ East, 10.00 chains;

and thence South $30^{\circ} 30'$ East, a distance of 16.40 chains, to a point on the south line of said Section 6, which point lies west, a distance of 19.51 chains

Exhibit "A"—(Continued)

from the southeast corner thereof, and the Point of Terminus of the above described line.

The tract of land above described contains 26.2 acres, more or less. [32]

PARCEL II

Segment F

That portion of Section 17, Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the easterly line of the Columbia Irrigation District's Main Canal intersects the north line of said Section 17; thence east along said north line to a point on the right bank of the Columbia River; thence southerly along said right bank to a point on the south line of Government Lot 3 of said Section 17; thence west to the southwest corner of said Government Lot 3; thence north along the west line of said Government Lot 3 to a point on the easterly line of the right-of-way of the said Columbia Irrigation District's Main Canal; thence northerly along said easterly line to the point of beginning.

The segment of land above described contains 102.8 acres, more or less.

Segment G

That portion of Sections 7 and 8, Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the north line of the southeast quarter of said Section 7 intersects the

Exhibit "A"—(Continued)

easterly line of the right-of-way of the Columbia Irrigation District's Main Canal; thence east to a point on the west line of the plat of the First Addition to Hover (according to the plat thereof recorded in Volume 1, page 44, Plat Records); thence south along said west line to a point on the south line of Seventh Street of the said First Addition to Hover; thence east along said south line of Seventh Street to a point on the right bank of the Columbia River; thence southerly along said right bank to a point on the south line of Section 8; thence west along said south line to a point on the easterly line of the right-of-way of the Columbia Irrigation District's Main Canal; thence northerly along said easterly line to the point of beginning.

The segment of land above described contains 129.92 acres, more or less. [33]

Segment H

That portion of Sections 7 and 8, Township 7 North, Range 31 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the easterly line of the right-of-way of the Columbia Irrigation District's Main Canal intersects the north line of said Section 7; thence east along the north line of said Section 7 and Section 8 to a point on the right bank of the Columbia River; thence southerly along said right bank to the south line of Seventh Street of the Town of Hover (according to the plat thereof recorded in Volume 1, page 41, Plat

Exhibit "A"—(Continued)

Records); thence west along the south line of said Seventh Street to the southwest corner of the plat known as the First Addition to Hover (according to the plat thereof recorded in Volume 1, page 44, Plat Records); thence north along the west line of said plat to a point on the south line of the northeast quarter of said Section 7; thence west along said south line to a point on the easterly line of the right-of-way of the Columbia Irrigation District's Main Canal; thence northerly along said easterly line to the point of beginning.

The segment of land above described contains 168.48 acres, more or less.

Segment J

That portion of Townships 7 and 8 North, Ranges 30 and 31 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at the northwest corner of Section 36, Township 8 North, Range 30 East of the Willamette Meridian; thence east along the north line of said Section 36 to a point on the right bank of the Columbia River; thence southerly along said right bank to a point on the south line of Section 5, Township 7 North, Range 31 East of the Willamette Meridian; thence west along the south line of said Section 5 and Section 6, Township 7 North, Range 31 East of the Willamette Meridian, to a point on the northeasterly line of the right-of-way of the Columbia Irrigation District's Main Canal; thence northwesterly along said northeasterly line

Exhibit "A"—(Continued)

to a point on the west line of said Section 36, Township 8 North, Range 30 East of the Willamette Meridian; thence north along said west line to the point of beginning.

Also a strip of land 125 feet in width, being 62.5 feet on each side of the center line of the right-of-way of Main Canal of the Columbia Irrigation District as now constructed over and across the south half of Section 36, Township 8 North, Range 30 East of the Willamette Meridian, Benton County, Washington.

The segment of land above described contains 986.14 acres, more or less. [34]

Segment K

That portion of Sections 4, 5, 6, 9, 10, 11, 14, 16, 23, 24 and 25 all in Township 8 North, Range 30 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point on the line of ordinary high water lying on the westerly (right) bank of the Columbia River, which point lies on the south line of said Section 25; thence westerly along the said south line of Section 25; to a point lying east, a distance of 1556.22 feet, from the southwest corner of said Section 25 and which point lies on a line lying parallel with and westerly, a distance of 30 feet, measured at right angles to a traverse line bearing North $4^{\circ} 16'$ East from a coordinate point, said coordinate point lying South $64^{\circ} 53' 07.6''$ East, a distance of 1690.03 feet from the southwest cor-

Exhibit "A"—(Continued)

ner of said Section 25; thence northerly parallel with and 30 feet distant westerly from said traverse line, which traverse line continues as follows: North $4^{\circ} 16'$ East, to a point lying 1909.3 feet from said coordinate point; thence along a 5° curve to the right, a distance of 285.4 feet, to a point at which the said parallel line extends westerly from a distance of 30 feet to a distance of 128 feet (measured radially) from the described traverse line; thence continuing along a line lying parallel with and 128 feet distant westerly from the described traverse line which traverse line continues as follows: along the remainder of said 5° curve to the right, a distance of 139.3 feet; thence North $25^{\circ} 30'$ West, 1580.6 feet; thence along a 8° curve to the left 599.4 feet; thence North $22^{\circ} 27'$ West, a distance of 2380.7 feet, at which point the said westerly parallel line descends from a distance of 128 feet to a distance of 100 feet, measured at right angles from the described traverse line; thence continuing along a line lying parallel with and 100 feet distant westerly from the described traverse line, which traverse line continues as follows: along the remainder of said bearing of North $22^{\circ} 27'$ West, 556.9 feet; thence along a 6° curve to the left 373.3 feet; thence North $44^{\circ} 51'$ West 1199.6 feet; thence along a 3° curve to the right 464.4 feet; thence North $30^{\circ} 55'$ West a distance of 180 feet, to a point at which the said westerly parallel line intersects the west line of Government Lot 4 in said Section 24 measured at approximate right

Exhibit "A"—(Continued)

angles and a distance of 100 feet westerly from the described traverse line; thence north along said west line, a distance of 30 feet, more or less, to the northwest corner of said Government Lot 4; thence east along the north line of said Lot 4, a distance of 50 feet, more or less, to a point on a line lying parallel with and westerly, a distance of 36 feet, measured at right angles to the continuation of the described traverse line; thence along said parallel line and 36 feet distant westerly from the traverse line, which traverse line continues North $30^{\circ} 55'$ West, a distance of 325.8 feet, at which point the said westerly parallel line extends westerly from a distance of 36 feet to a distance of 67 feet, measured at right angles from the described traverse line; thence continuing along a line lying parallel with and 67 feet distant westerly from the described traverse line, [35] which traverse line continues North $30^{\circ} 55'$ West, a distance of 845.28 feet at which point the said westerly parallel line intersects a line bearing South $79^{\circ} 12' 50.8''$ West, at a distance of 67 feet, measured at right angles from the described traverse line; thence along said line bearing South $79^{\circ} 12' 50.8''$ West, 467.67 feet; thence South $79^{\circ} 32' 52.9''$ West, a distance of 319.44 feet, to a point on the west line of the southeast quarter of the northeast quarter of said Section 23; thence North $1^{\circ} 02' 29.8''$ West along said west line, a distance of 497.29 feet, to the northwest corner of said subdivision; thence South $89^{\circ} 56' 45.3''$ East along the north line of said subdivision,

Exhibit "A"—(Continued)

a distance of 580 feet; thence north, a distance of 250 feet; thence northwesterly to a point on the south line of the southwest quarter of the southeast quarter of said Section 14, which point lies east, a distance of 40 feet, from the southwest corner thereof; thence west, a distance of 40 feet, to the said southwest corner thereof; thence north along the west line of the said southwest quarter of the southeast quarter, a distance of 60 feet; thence northwesterly to a point on the east line of the west half of the east half of the southeast quarter of the southwest quarter of said Section 14, which point lies north, a distance of 260 feet, from the southeast corner of the above said subdivision; thence continuing northwesterly to a point on the west line of the above said subdivision, which point lies north, a distance of 460 feet, from the southwest corner thereof; thence northwesterly to a point on the easterly line of the right-of-way of the existing main canal of the Columbia Irrigation District lying over and across the southwest quarter of the southwest quarter of said Section 14, said point lying north, a distance of 900 feet, from the south line of the said southwest quarter of the southwest quarter; thence north along the said easterly right-of-way line to a point on the north line of the said southwest quarter of the southwest quarter; thence east along the said north line to the northeast corner thereof; thence north along the west line of the north-

Exhibit "A"—(Continued)

east quarter of the said southwest quarter of Section 14 to a point on the southerly line of the right-of-way of the Yakima Branch of the Oregon-Washington Railroad and Navigation Company (U.P.R.R. Co.); thence easterly along said southerly right-of-way line to a point lying opposite Railway Survey Station 1859+00; thence northwesterly and at right angles across said railroad right-of-way at said survey station to a point on the northerly line of said right-of-way; thence northeasterly along the said northerly right-of-way line to a point lying opposite Railway Survey Station 1860+10.0; thence North $44^{\circ} 45' 08''$ West, a distance of 1764.96 feet, more or less, to a point lying on the southeasterly line of Lot 5 of the Replat of Donelson's Plat (according to the plat thereof recorded in Volume 4, Page 19, Plat Records) in said Section 14, which point lies northeasterly, a distance of 757.1 feet, from the south corner of said Lot 5; thence northeasterly along the said southeasterly line of Lot 5, a distance of 34 feet; thence North $46^{\circ} 32' 40''$ West, a distance of 200 feet, to a point on the northwesterly line of Lot 1 of said Replat of Donelson's Plat; thence South $43^{\circ} 27' 20''$ West, along the said northwesterly line of Lot 1, a distance of 42 feet; thence North $44^{\circ} 02' 48''$ West, 424.96 feet; thence North $40^{\circ} 24' 47''$ West, a distance of 230 feet, more or less, to a point on the northeasterly line of the right-of-way of the dedicated road (Columbia River Road) as shown on said plat; thence southwesterly at right

Exhibit "A"—(Continued)

angles to said road right-of-way, a distance of 40 feet, more or less, to a point on the southwesterly line of said road right-of-way, thence northwesterly, along the said southwesterly line of the right-of-way to a point on the southerly line of the right-of-way of the existing spillway of the Columbia Irrigation District lying in Government Lot 1 of said Section 14; thence northeasterly along the said southerly right-of-way line to a point on the line of ordinary high water along the right (westerly) bank of the Columbia River; thence northwesterly along the said line of ordinary high water, a distance of 55 feet, more or less, to a point on the northerly line of the right-of-way of said existing spillway; thence southwesterly along the said northerly right-of-way line to a point lying 255.4 feet from the easterly line of the existing right-of-way of the Main Canal of the said Columbia Irrigation District (measured along the said northerly right-of-way line of the spillway); thence deflect an angle of $100^{\circ} 21'$ to the right [36] northwesterly, a distance of 100 feet, more or less, to a point on the southerly line of the right-of-way of the existing County Road No. 375; thence North $63^{\circ} 39'$ West, a distance of 760 feet, more or less, to a point on a line lying parallel with and north, a distance of 274.8 feet, from the south line of Government Lot 5 in said Section 11; thence west along said parallel line, a distance of 95 feet, more or less, to a point on the west line of said Government Lot 5; thence north along the said west

Exhibit "A"—(Continued)

line to a point lying north, a distance of 400 feet, from the southwest corner of said Government Lot 5; thence northwesterly to a point on the west line of Government Lot 4 in said Section 10, which point lies north, a distance of 940 feet, from the southwest corner thereof; thence continuing northwesterly to a point lying on the east line of the west half of the southwest quarter of the southeast quarter of said Section 10, which point lies north, a distance of 1210 feet, from the southeast corner thereof; thence continuing northwesterly to a point lying on the north line of the southwest quarter of the southeast quarter of said Section 10, which point lies east, a distance of 350 feet, from the northwest corner thereof; thence west along the said north line to the said northwest corner thereof; thence continuing west along the south line of the northeast quarter of the southwest quarter of said Section 10, to the southwest corner of the east half of the said northeast quarter of the southwest quarter; thence north along the west line of the said east half, a distance of 300 feet; thence northwesterly to a point on the section line common to said Sections 9 and 10, which point lies north, a distance of 750 feet, from the southwest corner of the northwest quarter of the southwest quarter of said Section 10; thence north along the said section line to a point lying south, a distance of 165 feet, from the southeast corner of Government Lot 2 in said Section 9; thence northwesterly to a point on the south line of said Government Lot 2, which point

Exhibit "A"—(Continued)

lies west, a distance of 165 feet, from the said southeast corner thereof; thence east along said south line, a distance of 135 feet; thence northwesterly, a distance of 425 feet, more or less, to a point described as follows:

Commencing at a point on the Washington Coordinate System, South Zone, the y coordinate of said point being North 317,657.00 feet and the x coordinate being East 2,366,513.87 feet (said coordinate point lying approximately 265 feet north and 175 feet east from the southeast corner of said Government Lot 2); thence North $65^{\circ} 30'$ West, a distance of 460.7 feet; thence South $24^{\circ} 30'$ West, a distance of 160 feet, to the above said point.

thence bearing North $65^{\circ} 30'$ West from the above described point, a distance of 2400 feet, more or less, to a point of intersection with the south line of Government Lot 6 in said Section 4; thence west along the said south line to the southwest corner thereof; thence north along the west line of said Government Lot 6, a distance of 39.97 feet; thence northwesterly to a point lying on the east line of the southwest quarter of the southwest quarter of said Section 4, which point lies north, a distance of 1013.92 feet, from the southeast corner thereof; thence northwesterly to a point on the north line of the said southwest quarter of the southwest quarter, which point lies east, a distance of 828.94 feet, from the northwest corner thereof; thence North $56^{\circ} 08'$ West, 745.22 feet; thence

Exhibit "A"—(Continued)

North $59^{\circ} 02'$ West, 399.80 feet; thence North $30^{\circ} 58'$ East, 9.78 feet; thence northwesterly, a distance of 147.82 feet, more or less, to a point on the north line of Tract 2 of Pratt's Replat of Tract 1 of Chicago Ten Acre Tracts (according to the plat thereof recorded in Volume 2, Page 88, Plat Records) in said Section 5, which point lies east, a distance of 185.68 feet, from the northwest corner [37] of said Tract 2; thence northwesterly to a point on the west line of Tract 3 of said Pratt's Replat, which point lies north, a distance of 465 feet, from the southwest corner of said Tract 3; thence northwesterly to a point lying on the west line of the north half of the east half of that portion of Tract 2 of Chicago Ten Acre Tracts (according to the plat thereof recorded in Volume 1, page 46, Plat Records) lying south of the Highway running east and west across said Tract 2, which point lies north, a distance of 325 feet from the southwest corner thereof; thence north, along said west line, a distance of 20 feet, more or less, to the south line of the right-of-way of the said Highway lying over and across said Tract 2; thence west along the said south line of the Highway a distance of 110 feet, more or less, to a point on a line lying parallel with and east, a distance of 220 feet, from the west line of said Tract 2 of said Chicago Ten Acre Tracts; thence north along said parallel line, a distance of 51.65 feet; thence northwesterly over Tract 3 of said Chicago Ten Acre Tracts by the following courses and distances:

Exhibit "A"—(Continued)

North $63^{\circ} 48'$ West, 330.0 feet;North $26^{\circ} 12'$ East, 5.0 feet;North $63^{\circ} 48'$ West, 100.0 feet;South $26^{\circ} 12'$ West, 5.0 feet;

and thence North $63^{\circ} 48'$ West, a distance of 545.0 feet, to a point on the west line of said Tract 3, which point lies north, a distance of 498.04 feet, from the center line of the Highway running east and west across said Tract 3; thence south along said west line to the center line of said Highway; thence west along the center line of said Highway abutting the south line of Tracts 4 and 5 of said Chicago Ten Acre Tracts, to a point on the southerly extension of the west line of said Tract 5; thence north along the said southerly extension and said west line, to a point lying north, a distance of 390 feet, from the southeast corner of Tract 6 of said Chicago Ten Acre Tracts; thence northwesterly to a point on the west line of said Tract 6, which point lies north, a distance of 610 feet, from the southwest corner thereof; thence north along said west line to a point of intersection with a line lying parallel with and southerly, a distance of 160 feet, measured at right angles from a traverse line which point of beginning is described as follows:

Commencing at a point on the Washington Coordinate System, South Zone, the y coordinate of said point being North 322,710.0 feet, and the x coordinate of said point being East 2,356,902.30 feet (said coordinate point lying approximately

Exhibit "A"—(Continued)

785 feet north and 20 feet east from the southwest corner of said Tract 6); thence South $64^{\circ} 55'$ East, a distance of 100 feet, to the True Point of Beginning of said traverse line.

thence northwesterly parallel with and 160 feet distant southerly from said traverse line which traverse line bears North $64^{\circ} 55'$ West from its above described true point of beginning, a distance of 1186.0 feet, at which point the said southerly parallel line descends from a distance of 160 feet to a distance of 115 feet, measured at right angles to the described traverse line; thence continuing along a line lying parallel with and 115 feet southerly from the described traverse line which continues North $64^{\circ} 55'$ West, a distance of 250 feet, at which point the said southerly parallel line extends southerly from a distance of 115 feet, to a distance of 160 feet, measured at right angles from the described traverse line; thence continuing along a line lying parallel with and 160 feet southerly from the described traverse line which continues North $64^{\circ} 55'$ West, a distance of 75 feet, more or less, to a point at which the said southerly parallel line intersects the east [38] line of Tract 9 in Hover's Villa Tracts (according to the plat thereof recorded in Volume 1, Page 19, Plat Records) in said Section 6; thence south along the said east line of Tract 9 to a point lying north, a distance of 125 feet, from the southeast corner thereof; thence northwesterly, to a point on a line lying parallel

Exhibit "A"—(Continued)

with and north, a distance of 242.67 feet, from the south line of Tract 8 of said Hover's Villa Tracts and which point lies west, a distance of 85 feet, from the east line of said Tract 8; thence west along said parallel line to the west line of said Tract 8; thence continuing west along the westerly extension of said parallel line, across Nutmeg Street, to the east line of Tract 7 of said Hover's Villa Tracts; thence north along said east line of Tract 7, to a point lying north, a distance of 312.67 feet, from the southeast corner of said Tract 7; thence northwesterly to a point on the east line of Tract 3 of said Hover's Villa Tracts, which point lies north, a distance of 180 feet, from the southeast corner of said Tract 3; thence north along the said east line of said Tract 3 to a point on a line lying parallel with and north, a distance of 210 feet, from the south line of said Tract 3; thence west along the said parallel line, to a point on the easterly line of the right-of-way of the Spokane, Portland and Seattle Railway Company; thence northeasterly along said easterly line, a distance of 60 feet, more or less, to a point on a line bearing North $54^{\circ} 51'$ West; thence along said line bearing North $54^{\circ} 51'$ West, a distance of 50 feet, more or less, to a point of intersection with the easterly line of the right-of-way of the Northern Pacific Railway Company; thence northeasterly, east and northeasterly along said right-of-way line to the right (westerly) bank of the Columbia River; thence southeasterly along the said river bank, to the point

Exhibit "A"—(Continued)

of intersection with the south line of said Section 25 and the point of beginning.

Also a parcel of land lying in the southwest quarter of the southwest quarter of said Section 9 and the northwest quarter of the northwest quarter of said Section 16, said parcel being more particularly described as follows:

Beginning at the southwest corner of said Section 9, thence north along the west line thereof, a distance of 150 feet; thence east along a line lying parallel with the south line of said Section 9 to a point on the west line of the southeast quarter of the said southwest quarter of the southwest quarter of Section 9; thence north along said west line to a point on a line lying parallel with and southwesterly, a distance of 150 feet, measured at right angles, from the center line of the main track of the railroad of the Spokane, Portland and Seattle Railway Company; thence southeasterly along said parallel line to a point on a line which lies parallel with and northwesterly, a distance of 20 feet, measured at right angles, from the center line of the existing right-of-way of the McNary-Pasco Transmission Line as the same is located over and across the said northwest quarter of the northwest quarter of Section 16; thence southwesterly along the last described parallel line, a distance of 185 feet; thence northwesterly, a distance of 260 feet, more or less, to a point on the section line common to said Sections 9 and 16; thence west along said Sec-

Exhibit "A"—(Continued)

tion line, a distance of 860 feet, more or less, to the point of beginning.

The segment of land above described contains 700.74 acres, more or less.

Segment L

That portion of Section 36, Township 9 North, Range 29 East of the Willamette Meridian, and Section 31, Township 9 North, Range 30 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the easterly line of the right-of-way of the Northern Pacific Railway Company intersects the [39] right (southerly) bank of the Columbia River; thence southwesterly along said easterly right-of-way line to a point on the south line of said Section 31; thence west along the south line of said Section 31 to a point of intersection with the southerly line of the right-of-way of Levee 5 D as shown on Corps of Engineers, U. S. Army, Construction Drawing No. MDL-1-0-5/7; thence northwesterly along said southerly right-of-way line to the point of intersection with the 338 foot contour line (above M.S.L.), which point lies approximately on the east line of, and northerly, a distance of 580 feet, from the southeast corner of Tract 8 of the Replat of Columbia Gardens in the Town of Kennewick, Washington, (according to the plat thereof recorded in Volume 2, Page 92, Plat Records); thence southwesterly and northwesterly along said 338 foot contour line lying

Exhibit "A"—(Continued)

across the said Replat of Columbia Gardens to a point on the west line of Tract 3 of said Replat of Columbia Gardens, which point lies north, a distance of 650 feet, from the southwest corner of said Tract 3; thence west across Washington Street in the said Town of Kennewick, to a point on the west line of said street, which point lies north, a distance of 880 feet, from the south line of said Section 31; thence north along said west line to a point lying north, a distance of 400 feet, from the southeast corner of Tract 1 of Columbia Gardens in said Town of Kennewick (according to the plat thereof recorded in Volume 1, Page 52, Plat Records); thence westerly across said Tract 1, to a point on the west line of said Tract 1, which point lies north, a distance of 425 feet, from the southwest corner thereof; thence west to a point on the center line of Auburn Street in said Town of Kennewick; thence south along said center line to a point on the easterly extension of the north line of the south 80 feet of Tract "Q" in the Northern Pacific Irrigation Company's Amended Plat of said Town of Kennewick (according to the plat thereof recorded in Volume 1, Page 70, Plat Records); thence west along said easterly extension and the said north line of the south 80 feet, to a point lying west, a distance of 78 feet, from the east line of said Tract "Q"; thence north, parallel with the said east line of Tract "Q", a distance of 40 feet; thence northwesterly to a point lying on the west line of said Tract "Q", which point lies north, a

Exhibit "A"—(Continued)

distance of 280 feet, from the southwest corner thereof; thence north along the said west line to a point on the easterly extension of the south line of Lot 18 in Desgranges Addition in the said Town of Kennewick (according to the plat thereof recorded in Volume 3, Page 91, Plat Records); thence west along the said easterly extension, the said south line of Lot 18, and the westerly extension thereof, to a point on the center line of Cascade Street in said Desgranges Addition; thence north along said center line to a point on the easterly extension of the south line of Lot 3 of said Desgranges Addition; thence west along said easterly extension, the said south line of Lot 3, and the westerly extension thereof, to a point on the west line of said Desgranges Addition; thence north along said west line to a point lying north, a distance of 60 feet, from the southeast corner of Tract "N" of the said Northern Pacific Irrigation Company's Amended Plat; thence northwesterly to a point on the west line of the east 193 feet of said Tract "N", which point lies north, a distance of 150 feet, from the south line of said Tract "N"; thence continuing northwesterly to a point lying on east line of the west 199 feet of said Tract "N", which point lies on a line lying parallel with and north, a distance of 202 feet from the south line of said Tract "N"; thence west along said parallel line, a distance of 110 feet; thence north 58 feet; thence west, 30 feet; thence north, 15 feet; thence west, a distance of 59 feet,

Exhibit "A"—(Continued)

to a point on [40] the west line of said Tract "N", which point lies north, a distance of 275 feet, from the southwest corner thereof; thence continuing west to a point on the center line of North Everett Street in said Town of Kennewick; thence north along the said center line to a point lying due east from a point on the east line of Tract "L" of said Northern Pacific Irrigation Company's Plat, which point lies north, a distance of 300 feet, from the southeast corner thereof; thence west to the said point on the east line of Tract "L"; thence northwesterly to a point lying on the north line of said Tract "L", which point lies east, a distance of 412.57 feet from the northwest corner thereof; thence west along the said north line of Tract "L" to a point lying due south from a point lying on the south line of Tract "M" of said Northern Pacific Irrigation Company's Plat, which point lies west, a distance of 269 feet, from the southeast corner of said Tract "M"; thence north, a distance of 20 feet, to a point on the center line of "E" Street (now West Innaha Avenue) of the said Northern Pacific Irrigation Company's Plat; thence west along said center line to the point of intersection with the northerly line of the right-of-way of State Highway No. 3, U.S. No. 410 (also known as Columbia Avenue); thence northwesterly along said northerly line to a point lying north, a distance of 115 feet, from the south line of said Tract "M"; measured at right angles thereto; thence continuing northwesterly to a point lying on the

Exhibit "A"—(Continued)

northerly extension of the west line of North Fruitland Street in said Town of Kennewick, which point lies north, a distance of 200 feet, from the south line of said Tract "M"; thence continuing northwesterly to a point on the west line of said Tract "M", which point lies north, a distance of 230 feet, from the southwest corner thereof; thence northwesterly to a point lying on the east line of Lot 16 in Delmar's Addition to Kennewick (according to the plat thereof recorded in Volume 3, page 11, Plat Records), which point lies north, a distance of 40 feet, from the southeast corner of said Lot 16; thence northwesterly to a point lying on the north line of Lot 17 in said Delmar's Addition, which point lies east, a distance of 58 feet, from the northwest corner thereof; thence west along the said north line and the westerly extension thereof to a point on the center line of Garfield Street in said Delmar's Addition; thence north along the said center line, a distance of 50 feet, to a point on the easterly extension of the south line of Lot 3 of said Delmar's Addition; thence west along the said easterly extension and the said south line of Lot 3 to a point lying west, a distance of 60 feet, from the southeast corner of said Lot 3; thence north, a distance of 50 feet, to the southeast corner of Lot 1 in said Delmar's Addition, which lies on the north line of said Lot 3; thence continuing north along the east line of said Lot 1, a distance of 10 feet; thence west along a line lying parallel with the south line of said Lot 1 and the

Exhibit "A"—(Continued)

westerly extension thereof, to a point on the west line of said Delmar's Addition; thence north along the said west line to a point lying on the easterly extension of the northerly line of Block 2 of Yakima Irrigating and Improvement Company's Plat of Kennewick (according to the plat thereof recorded in Volume 1, page 9, Plat Records); thence [41] northwesterly along said easterly extension, the said northerly line of Block 2 and the westerly extension thereof, to a point on the east line of Tract 7 of Kennewick Gardens (according to the plat thereof recorded in Volume 1, page 16, Plat Records); thence continuing northwesterly to a point lying on the east line of the west 256.78 feet of said Tract 7, which point lies north, a distance of 240 feet, from the south line of said Tract 7; thence northwesterly to a point on a line lying parallel with and south, a distance of 110 feet, from the north line of said Tract 7, which point lies east, a distance of 136 feet, from the west line of said Tract 7; thence west along the said parallel line, a distance of 136 feet, to the said west line of Tract 7; thence south along the said west line and the southerly extension thereof to the center line of "F" Street (now Klamath Avenue) of said Kennewick Gardens; thence west along said center line, a distance of 50 feet, to a point on a line lying parallel with the said west line and the southerly extension thereof; thence north along said parallel line, to a point on a line that intersects the west line of said Tract 7 at a point lying south, a dis-

Exhibit "A"—(Continued)

tance of 70 feet, from the northwest corner thereof, and that intersects the north line of Tract 8 in said Kennewick Gardens at a point lying west, a distance of 120 feet, from the northeast corner thereof; thence northwesterly along the above described line, to the north line of said Tract 8; thence north, a distance of 20 feet, to the center line of "G" Street (now Metaline Avenue) of said Kennewick Gardens; thence west along the said center line to a point on the southerly extension of a line, that intersects the south line of Tract 6 of said Kennewick Gardens at a point lying east, a distance of 287 feet, from the southwest corner thereof, and that intersects the north line of said Tract 6 at a point lying east, a distance of 291 feet, from the west line of said Tract 6; thence north along the above described said southerly extension and along said line to a point lying north, a distance of 50 feet, from the south line of said Tract 6; thence northwesterly to a point on a line lying parallel with and north, a distance of 240 feet, from the south line of Tract 5 in said Kennewick Gardens, which point lies east, a distance of 466 feet, from the west line of said Tract 5; thence west along the said parallel line, a distance of 466 feet, to the said west line of Tract 5; thence north along the said west line of said Tract 5 and the northerly extension thereof, to the center line of "H" Street (now West Okanogan Avenue) in said Kennewick Gardens; thence east along the said center line to the point of intersection with the southerly line

Exhibit "A"—(Continued)

of the right-of-way of State Highway No. 3 (U.S. No. 410) (also known as Columbia Avenue); thence due north to a point on the right (southerly) bank of the Columbia River; thence easterly along the said right bank to a point on the easterly line of the said right-of-way of the Northern Pacific Railway Company and the point of beginning.

The segment of land above described contains 26.12 acres, more or less. [42]

Segment P

That portion of Sections 35 and 36, Township 9 North, Range 29 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the west line of Giards' Orchard (according to the plat thereof recorded in Volume 3, page 48, Plat Records) intersects the south line of the right-of-way of State Highway No. 3 (U.S. No. 410); thence easterly along said south line to a point on the east line of Government Lot 3 of said Section 35; thence north along said east line to a point on the right bank of the Columbia River; thence easterly along said right bank to a point on a line, which extends due north from a point lying where the south line of the right-of-way of said State Highway No. 3 intersects the center line of "H" Street (now known as West Okanogan Avenue) of Kennewick Gardens (according to the plat thereof recorded in Volume 1, page 16, Plat Records); thence south along the said extended line to the said point of intersection

Exhibit "A"—(Continued)

with the center line of said "H" Street; thence west along the said center line of "H" Street to a point lying on northerly extension of the east line of the west 280.86 feet of Tract 3 of said Kennewick Gardens; thence south along the said northerly extension, the said east line and the southerly extension thereof, to a point on the center line of "G" Street (now known as West Metaline Avenue) of said Kennewick Gardens; thence west along the said center line of "G" Street to a point on the northerly extension of the west line of the east 311.14 feet of Tract 11 in said Kennewick Gardens; thence south along the said northerly extension, the said west line and the southerly extension thereof, to a point on the center line of "F" Street (now known as West Klamath Avenue) of said Kennewick Gardens; thence west along the said center line of "F" Street, a distance of 227.50 feet, more or less, to a point on the west line of said Section 36; thence continuing west along the westerly extension of the said center line, a distance of 50 feet, to a point on the northerly extension of the east line of Block 1 in Vineyard Plat (according to the plat thereof recorded in Volume 3, page 60, Plat Records); thence south along the said northerly extension, the said east line and the southerly extension thereof, to a point on the center line of Giard Avenue (now known as West John Day Avenue) in said Vineyard Plat; thence west along the said center line to a point on the west line of said Vineyard Plat; thence continuing west

Exhibit "A"—(Continued)

along the westerly extension of said center line, a distance of 264 feet; thence north to a point which lies 675 feet south of the north line of the northeast quarter of the southeast quarter of Section 35; thence west 594 feet to a point on the east line of the plat known as Lumber Addition (according to the plat thereof recorded in Volume 3, page 52, Plat Records); thence south along said east line to a point on the northerly line of the right-of-way of the Oregon-Washington Railroad and Navigation Company, (U.P.R.R. Co.); thence northwesterly along said northerly line to the southwest corner of said Giards' Orchard; thence north along the west line of said Giards' Orchard to the point of beginning.

The segment of land above described contains 164.94 acres, more or less. [43]

Segment Q

That portion of Sections 27, 28, 29, 30, 33, 34 and 35, all in Township 9 North, Range 29 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the west line of the east half of Government Lot 2 of said Section 30 intersects the right bank of the Columbia River; thence easterly along said right bank to a point of intersection with the east line of Government Lot 3 of said Section 35; thence south along said east line to a point on the south line of the right-of-way of State Highway No. 3 (U.S. No. 410);

Exhibit "A"—(Continued)

thence westerly along said south line to the northwest corner of Giards' Orchard (according to the plat thereof recorded in Volume 3, page 23, Plat Records); thence south along the west line of said Giards' Orchard to a point on the northerly line of the right-of-way of the Oregon-Washington Railroad and Navigation Company (U.P.R.R. Co.); thence westerly along said northerly line to a point of intersection with the northerly line of the right-of-way of the Columbia Irrigation District's Main Canal; thence continuing westerly along the last mentioned northerly line to a point on the west line of the southeast quarter of said Section 29; thence north along said west line to a point which lies south 660 feet, more or less, from the center of said Section 29; thence west 330 feet; thence north 330 feet; thence west 330 feet; thence north 330 feet, more or less, to a point on the south line of Government Lot 4, which line is also the south line of Wadler's Center (according to the plat thereof recorded in Volume 3, page 100, Plat Records); thence west along the south line of said Wadler's Center to the southwest corner thereof; thence north along the west line of said Wadler's Center, to a point lying south, a distance of 457 feet, from the south line of the right-of-way of said State Highway No. 3; thence west, at right angles to the said west line of Wadler's Center, a distance of 275 feet, to a point on a line lying parallel with the said west line of Wadler's Center; thence north along said parallel line, to a point on the

Exhibit "A"—(Continued)

south line of the right-of-way of said State Highway No. 3; thence west along the said south right-of-way line to a point on the east line of the west 328 feet of Government Lot 5 in said Section 29; thence north along the said east line to a point on the north line of the said right-of-way of State Highway No. 3; thence west along the said north right-of-way line, to a point on the west line of the said east half of Government Lot 2 in said Section 30; thence north along the said west line to the point of beginning.

The segment of land above described contains 399.97 acres, more or less. [44]

Segment R

That portion of Section 25, Township 9 North, Range 28 East of the Willamette Meridian, and Section 30, Township 9 North, Range 29 East of the Willamette Meridian, all in Benton County, Washington, described as follows:

Beginning at a point where the east line of the west half of Government Lot 2 of said Section 30 intersects the northerly line of the right-of-way of State Highway No. 3 (U.S. No. 410); thence west along said northerly line to a point on the southerly extension of the east line of Lot 9 in Block 2 of Riverfront Plat (according to the plat thereof recorded in Volume 3, page 76, Plat Records) in said Section 30; thence north along the said southerly extension and the east line of said Lot 9, to a point on the south line of the north 50 feet of said Lot 9;

Exhibit "A"—(Continued)

thence west along the said south line, to the west line of said Lot 9 and the east line of Lot 8 in said Block 2; thence north along the said east line of Lot 8, a distance of 10 feet, to a point on the south line of the north 40 feet of said Lot 8; thence west along the said south line to the west line of said Lot 8 and the east line of Lot 7 in said Block 2; thence north along the said east line of Lot 7, a distance of 10 feet, to a point on the south line of the north 30 feet of said Lot 7; thence west, along the said south line to the west line of said Lot 7 and the east line of Lot 6 in said Block 2; thence north along the said east line of Lot 6, a distance of 10 feet, to a point on the south line of the North 20 feet of said Lot 6; thence west along the said south line to the west line of said Lot 6 and the east line of Lot 5 in said Block 2; thence north along the said east line of Lot 5, a distance of 10 feet, to a point on the south line of the north 10 feet of said Lot 5; thence west along said south line to the west line of said Lot 5; thence north along the said west line, a distance of 10 feet, to the northwest corner of said Lot 5, which lies on the south line of Rose Avenue in said Riverfront Plat; thence west along the south line of said Rose Avenue, to the northwest corner of Lot 1 in said Block 2; thence continuing west along the westerly extension of the said south line of Rose Avenue, a distance of 70 feet; thence northwesterly to a point on the west line of Government Lot 3 in said Section 30, which point lies north, a distance of 375 feet, from the north-

Exhibit "A"—(Continued)

erly line of the said right-of-way of State Highway No. 3, measured along said west line; thence continuing northwesterly to a point on the west line of the east 9.29 acres of Government Lot 4 in said Section 30, which point lies north, a distance of 760 feet, from the northerly line of said highway right-of-way; thence westerly to the southeast corner of Lot 2 in Block 2 of Laird's Plat (according to the plat thereof recorded in Volume 3, page 18, Plat Records) in said Section 30; thence west along the south line of said Lot 2 in Block 2, and the westerly extension thereof to a point on the center line of Laird Road in said Laird's Plat; thence south along said center line, a distance of 25 feet, to a point on the easterly extension of the south line of the north 25 feet of Lot 3 in Block 1 of said Laird's Plat; thence west along said easterly extension and the south line of the said north 25 feet, to the west line of said Laird's Plat; thence north along said west line, to a point of [45] intersection with the southerly line of the right-of-way of Levee No. 4 A as shown on the Corps of Engineers, U. S. Army, Construction Drawing No. MDL-1-0-4/2B; thence westerly along said southerly right-of-way line to a point on the east line of Section 25 in said Township and Range; thence south along said east line to a point on the northerly line of the right-of-way of the Richland-Kennebec Highway; thence northwesterly along said right-of-way line, a distance of 701.9 feet, to the westerly side of the concrete culvert under the roadway; thence northeasterly, at an

Exhibit "A"—(Continued)

angle of $90^{\circ} 23'$ to the right, a distance of 249.7 feet; thence southeasterly, at an angle of $86^{\circ} 15'$ to the right, a distance of 415 feet, more or less, to a point on the east line of said Section 25; thence north along the said east line to a point on the southerly bank of the Yakima River; thence easterly along said southerly bank to a point on the east line of the west half of said Government Lot 2 in Section 30; thence south along the said east line to a point on the northerly line of right-of-way of said State Highway No. 3 and the point of beginning.

The segment of land above described contains 29.45 acres, more or less.

Segment S

That portion of Sections 23, 24, 25, Township 9 North, Range 28 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point where the northerly line of the right-of-way of the Columbia Irrigation District's Main Canal intersects the west line of said Section 23; thence north along the said west line to a point on the right (southerly) bank of the Yakima River; thence southeasterly, northeasterly and southeasterly along the right bank of the Yakima River, to a point on the east line of Section 25; thence south along the said east line of Section 25, to a point lying north, a distance of 350 feet, from the northerly line of the right-of-way of the Richland-Kennewick Highway; thence northwesterly

Exhibit "A"—(Continued)

along a bearing of approximately North $29^{\circ} 20'$ West, a distance of 415 feet, to a point on a line which subtends an angle of $90^{\circ} 23'$ (left) from the northeasterly line of the said right-of-way of the Richland-Kennewick Highway and which point lies northeasterly a distance of 249.7 feet, from said right-of-way line; thence southwesterly along said subtended line, a distance of 249.7 feet, to said right-of-way line; thence southeasterly along said right-of-way line, to a point on a line lying at right angles to and extending northeasterly from the southwesterly line of said right-of-way of the Richland-Kennewick Highway at the point of intersection with the westerly line of the connecting road between the said Richland-Kennewick Highway and State Highway No. 3 (U.S. No. 410); thence southwesterly along said extended line to the said point of intersection with the said westerly line of the connection road; thence south along said westerly line, to a point lying north, 208.71 feet, from northerly line of the right-of-way of said State Highway No. 3; thence North $71^{\circ} 17'$ West, 208.71 feet; thence South $18^{\circ} 43'$ West, 208.71 feet, to a point on the northerly line of the said right-of-way of State Highway No. 3; thence westerly along said northerly right-of-way line to a point lying opposite and 50 feet distant from Highway Engineer's Station 25+70, measured at right angles thereto, thence southwesterly at a right angle to the left, [46] to a point lying on the southerly line of said right-of-way, being opposite and 50 feet dis-

Exhibit "A"—(Continued)

tant from said Highway Engineer's Station 25+70; thence South 18° 45' West, 25 feet; thence southwesterly, a distance of 583 feet, more or less, to a point on a line bearing North 8° 28' East from a point lying on the northerly line of the right-of-way of the said Columbia Irrigation District's Main Canal; thence South 8° 28' West along said line, a distance of 36.7 feet, to said point on the northerly line of the Main Canal right-of-way; thence northwesterly along the said northerly line to a point on the east line of the west 300 feet of the northeast quarter of the northwest quarter of said Section 25; thence south along said east line to a point on the south line of the said northeast quarter of the northwest quarter; thence west along the said south line a distance of 300 feet to the southwest corner thereof; thence continuing west along the south line of the northwest quarter of the northwest quarter of said Section 25, a distance of 330 feet; thence north, parallel with the east line of the said northwest quarter of the northwest quarter, to a point on the northerly line of the right-of-way of the said Columbia Irrigation District's Main Canal; thence northwesterly along said northerly line, to a point of intersection with the west line of said Section 23 and the point of beginning.

There is excepted therefrom all that portion lying within the right-of-way of the Columbia Irrigation District's Main Canal.

The segment of land above described contains 431.15 acres, more or less.

Exhibit "A"—(Continued)

Segment "T"

That portion of Sections 15, 16 and 22, Township 9 North, Range 28 East of the Willamette Meridian, Benton County, Washington, described as follows:

Beginning at a point on the north line of said Section 16, which point lies on the northeasterly line of right-of-way of the Main Canal of the Columbia Irrigation District; thence southeasterly along the said canal right-of-way line to a point on the south line of said Section 15; thence east along the said south line of Section 15 to a point lying east a distance of 200 feet, from the quarter section corner lying on said south line of Section 15; thence South $44^{\circ} 30'$ East, 480 feet; thence South $67^{\circ} 40'$ East, 600 feet; thence South $74^{\circ} 53'$ East, 450 feet; and thence South $43^{\circ} 42'$ East, a distance of 870 feet, more or less, to a point on the north line of Government Lot 4 of said Section 22; thence west along the said north line of Lot 4 to a point on the northerly line of right-of-way of the said Main Canal; thence southeasterly along the said canal right-of-way line, to a point on the east line of said Government Lot 4; thence north along the said east line to a point on the line of ordinary high water on the right (southerly) bank of the Yakima River; thence northwesterly along the said line of ordinary high water, to a point on the north line of said Section 16; thence west along said section line to the point of beginning.

The segment of land above described contains 153.00 acres, more or less. [47]

Exhibit "A"—(Continued)

PARCEL III.

Tract K-538E

A tract of land lying in Government Lot 1, Section 14, Township 8 North, Range 30 East of the Willamette Meridian, Benton County, Washington, said tract being all that portion lying within the right-of-way of the spillway of the Columbia Irrigation District, and being more particularly described as follows:

Commencing at the northwest corner of said Section 14, thence east along the north line of said Section 14, a distance of 227 feet, more or less, to a point on the east line of the right-of-way of the canal of the Columbia Irrigation District; thence southwesterly along said east right-of-way line, a distance of 589.8 feet, to the true point of beginning; thence deflect an angle of $91^{\circ} 00'$ to the left, a distance of 380 feet, more or less, to a point on the ordinary high water line on the right (westerly) bank of the Columbia River; thence southeasterly along said line of ordinary high water to a point on the northwesterly line of Lot 2 of Replat of Donelson's Plat (according to the plat thereof recorded in Volume 4, Page 19, Plat Records) in said Section 14, thence southwesterly along said northwesterly line to a point on the easterly line of the right-of-way of the said Columbia Irrigation District Canal; thence northwesterly along said right-of-way line to the point of beginning.

Exhibit "A"—(Continued)

The tract of land above described contains 0.48 of an acre, more or less.

Subject to the right, title, and interest of the public in roads.

Tract K-666E

All that portion of a strip of land which lies within the right-of-way of the existing canal of the Columbia Irrigation District as constructed over and across the northwest quarter of the southwest quarter of Section 14, Township 8 North, Range 30 East of the Willamette Meridian, Benton County, Washington, said strip of land being 110 feet in width, being 30 feet wide on the northerly side and 80 feet wide on the southerly side of a center line which bears South $71^{\circ} 18'$ East from a point lying South $37^{\circ} 22' 01''$ East, a distance of 1042.75 feet, from the northwest corner of said subdivision, said center line extending over and across said canal right-of-way, and intersecting the center line of said right-of-way at a point lying north, a distance of 280 feet, more or less, from the south line of said subdivision.

The tract of land above described contains 0.1 of an acre, more or less. [48]

[Endorsed]: Filed Dec. 2, 1954.

[Title of District Court and Cause.]

RECORD OF PROCEEDINGS
AT THE TRIAL

Be It Remembered:

That the above-entitled action came regularly on for trial and determination on February 17, 1958, before the Honorable Sam M. Driver, Judge, without a jury, in the District Court of the United States for the Eastern District of Washington, Southern Division, it being stipulated to hear the case at Spokane, Washington, the plaintiff appearing by Ronald R. Hull, Assistant United States District Attorney; the defendant, Columbia Irrigation District, appearing by James Leavy; the defendant State of Washington appearing by E. P. Donnelly; and both sides having announced they were ready for trial;

Whereupon, the following proceedings were had, to wit: [51]

Spokane, Washington, Monday, February 17, 1958, 10:00 o'clock a.m.

(Whereupon, the trial in the instant cause was commenced, all parties being present, and the following proceedings were had, to wit:)

(Whereupon, an off the record conference was held in chambers.)

(Whereupon, the proceedings were resumed in open court.)

The Court: The United States against the Columbia Irrigation District.

Mr. Hull: We are ready, your Honor.

Mr. Leavy: Ready, your Honor.

The Court: All right, proceed.

Mr. Hull: If it please the Court, I believe that the pertinent time——

The Court: (Interposing) Pardon me, the Clerk just called my attention to the fact that this is a Southern Division case and I think that we should have for the record here a stipulation of counsel that it may be tried here in Spokane in the Northern Division of the District, is it so stipulated?

Mr. Leavy: It is so stipulated, also, without a jury. [52]

The Court: Yes, all right, without a jury, too.

Proceedings As To Parcel II.

Mr. Hull: I believe that the pertinent date of valuation in this case, No. 765, would be May 13, 1953.

The Court: What is that date, again?

Mr. Hull: May 13, 1953.

The Court: All right.

Mr. Hull: Which was the date of the order granting the right of possession. No, I misread it, it is March 18, 1953.

The Court: All right.

Mr. Hull: That is the date of the order of possession.

Mr. Donnelly: March?

Mr. Hull: March 18, 1953.

Mr. Leavy: I think, technically, it should be March 31, that is the effective date of the order in

which possession was authorized to be taken, on March 31, 1953.

Mr. Hull: All right, it is so corrected.

The Court: All right, March 31.

Mr. Hull: We will address ourselves at this time separately and, first, to Parcel II in Civil No. 765, which has reference to properties which were privately owned by individuals other than the defendant Columbia Irrigation District.

The Court: All right. [53]

Mr. Hull: Yes.

The Court: Let's see, you filed a petition, initially, here, a petition for condemnation?

Mr. Hull: That is correct, your Honor, it was not a declaration of taking at that time.

The Court: There was no declaration filed originally, and in that petition this property you speak of, or the property rights, are designated as Parcel II, is that correct?

Mr. Hull: That is correct.

The Court: All right.

Mr. Hull: There were a number of so-called segments designated in the complaint and I am ready to put a witness, Mr. Max Kizer, on the stand who would testify that none of the property so described was owned by the Columbia Irrigation District, but that those were lands which were included within the District and had been the subject of assessment thereby.

The Court: As I understand it from our informal conference in chambers, counsel for the land owners is willing to stipulate that the District did

not directly own the lands, that they were owned by, or that they were included in the boundaries of the District, but not directly owned by the District, isn't that correct?

Mr. Leavy: Yes, they were within the bounds of the District. The fee titles in all private lands were owned by **individuals within the District**

The Court: Yes.

Mr. Hull: I can make that in an informal offer of proof.

The Court: Well, you could stipulate that, I think that would be sufficient. Are you prepared to make an offer of proof on that phase of the case?

Mr. Leavy: Yes, I am, your Honor. It is my understanding that the Court's ruling is that the District has no compensable interest resulting from the taking of any land in Parcel II?

The Court: Yes, that is the conclusion I have reached here. However, I will reserve the right to change my mind about that before this trial is concluded after reading the case that Mr. Donnelly has called to my attention. I haven't had an opportunity to read it yet, and I will make this tentative ruling and, then, of course, I can always change it before the trial is over if the case he has cited convinces me that I am wrong.

Mr. Leavy: The Columbia Irrigation District offers to prove that in 1947 and 1948 the District was advised that an extensive portion of the lands in the District, subject to assessments, would be taken by the Federal Government in connection with the McNary Dam Project and negotiations

were commenced between representatives of the United States and [55] the Columbia Irrigation District to ascertain the damages payable by the United States to the District; that pursuant to agreement of the parties, it was agreed that the United States would make an appraisal and that the Columbia Irrigation District would fully cooperate with the representatives of the United States in making all necessary information available to the United States' representatives; that representatives of the United States were advised that the District, as a municipal corporation and a public body, would not expend the public funds to make their own appraisal but would probably rely upon the appraisal made by the United States; that thereafter such an appraisal was made by representatives of the United States and prior to May 28, 1951, the Columbia Irrigation District was orally advised on several occasions that within the "near future" a proposal would be made by the United States to the Irrigation District; that on May 28, 1951, the District wrote to a representative of the United States in the Walla Walla District of the Army Engineers pointing out that on numerous occasions the District had been advised that "within the very near future" a proposal would be made and that the Directors of the District were wondering if it could not be done within the next few weeks; that under date of June 7, 1951, Merle E. Lietzke, Chief, Real Estate Division of the United States Army Engineers, wrote to the District advising them that the matter was [56] receiving consideration in the

office of the Chief of Engineers in Washington, D. C., and that a decision was expected within a few days; that shortly thereafter and prior to July 12, 1951, representatives of the United States orally offered to pay to the Columbia Irrigation District for all of their interests the sum of \$149,000.00; that said offer was accepted by the Columbia Irrigation District; that the State of Washington had an interest in this proceeding by reason of holding bonds against the lands in the District, and that the District agreed that the bonded indebtedness would be paid in full by the District upon receiving settlement from the United States; that the amount to retire said bonds as of the time of that agreement, that is, approximately July 1, 1951, was \$145,617.72; that prior to November 10, 1951, the United States prepared and transmitted to Columbia Irrigation District a proposed form of agreement; that the agreement was put into final form prior to December 10, 1951, and was put into final form by representatives of the United States; that on December 10, 1951, the Directors of the Columbia Irrigation District passed a resolution authorizing the execution of the agreement previously sent to them by the United States; that on December 13, 1951, the United States was advised of the execution of the agreement providing for the payment to the Columbia Irrigation District by the United States of \$149,000.00; that said resolution of December 10, 1951, [57] provides, in part, as follows:

“Whereas, the acquisition of all said rights can

most expeditiously and economically be acquired through condemnation proceedings instituted by the United States of America and the United States of America acting by and through the Corps of Engineers, Walla Walla District, Walla Walla, Washington, and the Columbia Irrigation District acting by and through its Board of Directors have agreed that the reasonable value of the interests of the District being acquired by the Government is \$149,000.00, and

Whereas, the lands within the boundaries of the Columbia Irrigation District are subject to a bonded indebtedness in an amount less than said sum and it is desired to pay off said bonds in full from said sum, and

Whereas, to consummate the objectives an agreement has been prepared for execution by the District and the Government, Now Therefore,

Be It Hereby Resolved, at a regular meeting of the Board of Directors of the Columbia Irrigation District, at which meeting all of the Directors of said District were present in person, that that certain agreement, a copy of which is attached hereto and by this reference incorporated herein as fully as if set forth herein verbatim, between the United States of America and the Columbia Irrigation District be executed by the Directors of the Columbia Irrigation District and that the right, title, and estate of the District in and to all of the lands and rights described in said agreement and all of the rights described in said agreement, be sold to the United States of America for the sum of \$149,-

000.00, subject, however, to the continued use by the District of the spillway for surplus waters situated on Tract J-473, McNary Lock and Dam Project, Tract K-538L, McNary Lock and Dam Project, and over and across Sections Twenty-eight (28), and Twenty-nine (29), Township Nine (9), North, Range [58] Twenty-nine (29), EWM, all in Benton County, Washington, and the right in perpetuity to spill waters over said spillways, and

Be It Hereby Further Resolved that the Board of Directors of the Columbia Irrigation District do hereby find that the reasonable market value of all of the rights and interests hereinabove referred to is the sum of \$149,000.00, and

Be It Hereby Further Resolved that James Leavy, as attorney for the Columbia Irrigation District, is hereby authorized, directed, and empowered to fully represent the Columbia Irrigation District in any condemnation proceeding hereafter filed by the United States of America for the acquisition of said interests as hereinabove set forth, and is hereby authorized and directed to enter into such stipulations and agreements as he may consider appropriate and proper to carry out the meaning and intent of this agreement to the end that said interests shall be transferred to the United States of America for the sum of \$149,000.00, and that from said sum there shall be paid to the holders of the bonds the amount due to such holders in full payment of all the outstanding bonded indebtedness of the said Columbia Irrigation District, and

Be It Further Resolved that the Columbia Irri-

gation District grant to the United States of America the right to immediate use and occupancy of the lands hereinabove referred to.

Passed unanimously this 10th day of December, 1951."

That the agreement referred to in said resolution is and was the agreement prepared by the United States of America providing for the payment by the United States to the Columbia Irrigation District of \$149,000.00; that said agreement so prepared by the representatives of the plaintiff was prepared [59] for the signature of the Directors of the Columbia Irrigation District and for the signature of Merle E. Lietzke, Contracting Officer, Chief, Real Estate Division, Corps of Engineers, Walla Walla District; under date of April 16, 1952, the District wrote to the United States pointing out that interest is running on the bonded indebtedness and that the agreement was reached "on the theory that the payment of the funds would be paid relatively promptly * * *"; that under date of April 24, 1952, the United States advised the District, "it is anticipated that the declaration of taking will be forwarded to the Field Representative of the Lands Division for the Department of Justice, within the near future, at which time we shall inform you relative to the date the instrument is filed and the funds deposited in the registry of the United States District Court for the Eastern District of Washington, Southern Division."

That on or about September 12, 1952, at approxi-

mately nine months after the reaching of the agreement between the United States of America and defendant, Columbia Irrigation District, the District was unofficially advised that the United States of America did not intend to carry out their agreement and in lieu thereof intended to file the above-entitled proceeding without making any deposit or agreement or agreeing to pay anything to the defendant, Columbia Irrigation District. [60]

That in reliance upon the integrity of the United States and the agreement of the plaintiff hereinbefore referred to Columbia Irrigation District voluntarily, and at the request of the United States, executed many agreements for rights of entry and other agreements to expedite the McNary Dam and Lock Project, which agreements would not have been executed except for the reliance of the Columbia Irrigation District upon the agreement reached with the United States of America.

That the State of Washington claims a lien upon the lands involved in the above-entitled proceeding and a lien upon any funds or monies paid therefor.

That the Columbia Irrigation District is a municipal corporation of the State of Washington lawfully organized at all times material hereto operating under the laws of the State of Washington; the Columbia irrigation system consists of a gravity flow system designed to serve a relatively narrow strip of irrigable land between the Columbia River and the Horse Heaven Hills. The area is somewhat unique in irrigation districts in that it cannot be expanded since it is surrounded by the Columbia

River, the Yakima River and the Kennewick Highlands Irrigation Project.

The Court: Mr. Leavy, just before you leave the contract, to clarify your offer of proof, it is my understanding that you do not contend that the written contract which, as you say, was prepared by representatives of the United States [61] was ever signed by the United States or by representatives of the United States?

Mr. Leavy: That is correct, your Honor, I might state in that connection that we didn't previously so contend because for a period of four years I requested the Government officers to either tell me that it had been signed or that it had not been signed or to show me a copy of it, and for a period of four years they refused to allow me to ascertain whether or not it was signed. Approximately, a year ago Mr. Hull, the Assistant United States Attorney, showed me the original contract which was unsigned.

The Court: There is an original signed or executed by the District?

Mr. Leavy: It's executed by the District, yes, your Honor.

The Court: I wonder if it wouldn't make a better record, perhaps, to put that in here.

Mr. Leavy: Yes, if the Government would produce it, I would like it.

The Court: Do you have that, Mr. Hull?

Mr. Hull: We have it here. Our position, of course, is that it was never approved or accepted by the Government, that it is a nullity.

The Court: My thought was this, without making any decision as to the effect of it, of course, I have in mind, [62] my present inclination is to reject the offer of proof. I think it would make a better record to show just exactly what was done in connection with the written contract. It would show, on its face, I presume that it was signed by representatives of the District and not by anyone else representing the United States?

Mr. Leavy: For the record, then, we will move that the Government produce it at this time.

The Court: You can tell your superiors that I ordered it done and place the responsibility on me.

Mr. Hull: Now, I have both the original and photostatic copies of the document.

Mr. Leavy: I imagine, the original, since the Government says it's a nullity, it wouldn't hurt them to lose it, now.

The Court: If you have a photostatic copy, I suppose we can consider it. I don't suppose that there is any question about the authenticity of the signatures, but we may as well put the original in. Wasn't a copy of that submitted somewhere along the line in connection with a motion for summary judgment? I seem to remember seeing it.

Mr. Hull: They were produced in court in September, 1956. This is the original of the agreement referred to by counsel. The resolution we do not have the original of. For the record, may it show that we are producing this on [63] direction of the Court?

The Court: Of course, whatever offer you make

here would be assumed to be true, in fact, if the offer is rejected, but I just thought that it would make a more definite and clear record if the document, itself, were put in.

Mr. Leavy: We offer the document labeled "Agreement" so-called, by the Directors of the Columbia Irrigation District and the Secretary, and dated September 10, 1951, together with our offer of proof.

Clerk of the Court: I will mark it as Defendants' 1, your Honor.

The Court: All right, Defendants' Exhibit 1 is identified here, that will identify it. All right, go ahead, then.

(Whereupon, said agreement was marked for identification as Defendants' Exhibit No. 1.)

Clerk of the Court: Is it admitted?

The Court: No, it is offered in connection with the offer of proof. Go ahead, Mr. Leavy.

Mr. Leavy: As I mentioned, the Columbia Irrigation District is in an unusual situation in that, contrary to ordinary districts, it cannot bring additional land to be served, it being circumscribed on all sides by natural barriers. The system is a gravity flow system. The main canal flows approximately twenty-one miles from the Dam to a diversion structure. The average grade of the [64] canal is 1.67 feet per mile. The canal has a capacity of 315 cubic feet per second at the headgate and at its lower end its capacity is 174 cubic feet per second. The canal is of earth construction, in the main, with some areas being concrete-lined and

other areas being clay-lined. There are also some flumes and considerable rock rip-rap to protect the canal. There are three waste-ways on the main canal.

Lateral Number Two takes off from the main canal and runs southeasterly for approximately seven and three-quarters miles. As in the case of the main canal, it is basically earth construction with some concrete-lined canal, some wood-stave flumes and wood-stave pipes and three concrete siphons. This lateral has two concrete waste-ways and several concrete canal checks. The lateral has a capacity of 70.2 cubic feet per second at the upper end and one cubic foot per second at the lower end. It has a grade of 2.58 feet per mile.

Lateral Number One is similar, having a length of 3.8 miles with a capacity at intake of 19.3 cubic feet per second and a capacity at the end of the canal of three cubic feet per second. It has an average grade of 4.2 feet per mile.

Lateral Number Three is similar, and is approximately twelve miles in length. It has a capacity of 82.5 cubic feet per second at the headgate and a lower end capacity of five cubic feet per second. It has a grade of 1.66 feet per mile. [65] There are fourteen local improvement districts in the District and four community laterals.

The soils in the District in lands subject to the irrigation are generally light and sandy and require a large amount of water. With modern farming practices, their productivity has been at a fairly constant level for the past ten years or more.

The described facilities of the District are adequate to serve all the land in the District, including the lands which have been taken by the United States of America in connection with the McNary Project and which are described in this proceeding as Parcels I and II. The District is required by law to render service to all irrigable land in the District, including that land taken by the United States. The lands taken by the United States from private owners are still in the boundaries of the irrigation district. Some of the land taken by the United States is actually now susceptible of irrigation and if the United States should dispose of such land to others the Columbia Irrigation District would be required by law to provide canals and other facilities to serve it. The area taken now that the Project is completed appears to be, in the opinion of witnesses that the District could produce, excessive to the needs of the United States, leaving the potentiality that the Government will dispose of such excess land and it will then be necessary for the District to serve that land. [66]

Prior to the taking by the Government the total acreage in the District was, approximately, 11,086 acres and the irrigated acreage in the District was, approximately, 8,000 acres. The acreage taken in the proceeding as described in Parcels I, II and III amounts to 3,425.13 acres, and the productive acreage that is included in that acreage is, approximately, 1,550 acres. The taking of this productive acreage out of the District will reduce the income of the District for the reason that the District

cannot assess Government-owned land by approximately \$13,000.00 a year. The reduction in acreage will not produce a corresponding reduction in expenses since canal maintenance is not affected except as to small portions of the canal laterals which are taken, or which have been taken. Approximately 132 of the total acres taken, as above-mentioned, are acres of land owned in fee by the Columbia Irrigation District and several thousand dollars worth of irrigation facilities were taken, most of which are included in the lands described as Parcel I. The sole source of income that the District has from which it is to pay its operation and maintenance expense and bonds and any additional construction costs is assessment against land, except for a very small source of income from the sale or rental of land owned by the District. The latter source of income is trivial in amount. The lands embraced in the District are virtually useless without the application of [67] irrigation water as furnished by the facilities of the Columbia Irrigation District due to the arid nature of the land. The Columbia Irrigation District has an assured water right duly filed and recorded for the appropriation of 300 cubic feet per second of water from the Yakima River and has facilities by way of gravity flow canal for the transmission of said water supply from the point of diversion to the lands in the Irrigation District; that all lands in the District benefit directly and indirectly from the existence of the District by reason of the fact that the application of water to this arid land

makes the land productive and valuable and provides economic support and income for the surrounding area, including the lands in and outside of the Irrigation District; that the size of the transmission facilities of the Columbia Irrigation District is and are and presently are originally based upon the economic feasibility of supplying water to the lands in the District as it existed prior to the acquisition of lands within the District by the plaintiff and that said facilities are excessive in size for the service of the lands remaining in the District after the acquisition of the lands by the Government. The lands acquired by the Government for the McNary Lock and Dam Project had water rights appurtenant thereto and each tract in such land received benefits from being included within the District and the District was ready at all times to supply service by way of irrigation water to said lands and [68] still is.

The Columbia Irrigation District, even if it becomes insolvent, cannot be dissolved if the State of Washington, as the principal bondholder, objects thereto; under the laws of the State of Washington assessments made by the Columbia Irrigation District shall be made in proportion to the benefits accruing to the lands assessed; that the laws of the State of Washington provide that any public lands of the State of Washington situated in any irrigation District shall be subject to the laws relating to the collection of irrigation district assessments to the same extent and in the same manner in which lands of like character held under

private ownership are subject thereto; that the right to assess lands for the operation and maintenance of an irrigation district under the laws of the State of Washington is a paramount obligation upon all lands included in such district; that the lands acquired by the plaintiff in this proceeding, as above alleged, cannot be assessed due to the principle that the Federal Government cannot be taxed by the State.

The law of the State of Washington makes all lands of the District liable for assessment to pay costs of construction and operation and maintenance, and there is no provision for the release of any portion of the land in the District from this liability. All values of all land taken by the United States and described in this proceeding as [69] Parcels I, II and III were fixed free of future encumbrances as the United States does not pay assessments. Oh, I might add insofar as the lands described as Parcel II are concerned the Irrigation District and the State of Washington did not receive any notice of the acquisition of said lands other than the notice given by this proceeding, which proceeding assumes that the Government has already acquired all of the lands in Parcel II from others.

The taking of the land by the Federal Government within the District, including both land taken from private owners and now removed from susceptibility to assessment, and the land taken from the District, including rights-of-way and improvements, changes the Columbia Irrigation District

from an economically feasible operating Irrigation District to an uneconomic Irrigation District. This results, basically, from the capital investment being disproportionate to the potential revenue. A willing buyer would have paid \$250,000.00 more for the system before the removal of Parcels I, II and III than he would now. This loss of market value in the system results from the fact that investors in irrigation systems reasonably amortize the investment at four percent over a forty to fifty year period. This is the standard practice in the Northwest. The potential revenue from the area as it existed before the taking considered by a willing buyer who was not forced to buy together with the condition of the [70] facilities was such that the reasonable market value of the system prior to the taking was \$700,000.00. The value after the loss of Parcels I, II and III was \$450,000.00. The just compensation that should be paid to the Columbia Irrigation District is \$250,000.00.

The District offers to prove all of the foregoing facts by competent witnesses.

The Court: I suppose it is covered by your offer, Mr. Leavy, but I wonder if there is any dispute about that, is it agreed that the Government has applied for public use all of the lands embraced within Parcel II in your petition?

Mr. Hull: I am sorry?

The Court: Well, I said I think it is covered by Mr. Leavy's offer of proof but I don't think there should be any question about it, I understand that it is a fact that the Government has acquired

for public use from the private owners all of the lands in Parcel II?

Mr. Hull: That is correct.

The Court: The record may show that. Do you have any comment upon this offer of proof, Mr. Hull, before I pass and rule upon it?

Mr. Hull: I can and would traverse it for the record but I see no objection, it simply being an offer of proof.

The Court: You are objecting to it?

Mr. Hull: Yes. [71]

The Court: At this time I will sustain the objection to the offer of proof. I might say at this time the issue presented by the offer was involved in a motion for summary judgment by the plaintiff United States and that the matter was argued and a comprehensive brief submitted and the Court gave it very careful consideration and that is the reason that I feel that I am in a position now to rule summarily on the offer. I did spend quite a lot of time and thought on this problem because I think, as I have indicated here, the record of the prior hearing would show I have been aware of the equities, which I think favor the landowner District here. It didn't seem to me that there was any question but what the District had suffered very great financial loss because of the taking of these lands and the cutting down of the amount of land which they served and, of course, any plant, an irrigation plant, if it is not able to operate at full capacity, operates at an economic loss, as a rule, so that I think there has been a loss but

I come reluctantly to the conclusion that it is consequential and one for which compensation cannot be made in a compensation case, and that is the basis of my ruling here. However, I will before I make this final ruling examine that case just during my lunch hour, that case which you have cited, Mr. Donnelly.

Mr. Donnelly: All right.

The Court: Now, as I understand it, the position of [72] the Government is that there is no compensable element in Parcel II for which any compensation can be made. I don't know whether you have in mind awarding nominal damages or simply no damage, I doubt that it makes much difference.

Mr. Hull: There would be no compensative loss as to the District and, therefore, not even a nominal damage.

The Court: I see, and do you think that that is apparent by the offer of proof here, or do you have anything further to offer?

Mr. Hull: Well, I think in the facts that have been by now stipulated that the District owned no portion of said lands in Parcel II and that, at the most, all they had was a right to future assessment which we, of course, contend is not compensable.

The Court: Well, you may prepare findings and judgment on that basis and in order to facilitate appeal and cut the expense of appeal I am going to make separate findings and separate judgment as to Parcel II, separate and apart from I and III,

and then when you are ready, then, you may proceed on the Parcels I and III.

(End of Proceedings as to Parcel II.) [73]

Reporter's Certificate Attached. [74]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW— Parcel II

This cause having come on regularly for trial on February 17, 1958, upon the issues of law and fact arising from the acquisition by the plaintiff of the lands described within Parcel II herein, the plaintiff United States of America being represented by Ronald R. Hull, Assistant United States Attorney, the defendant Columbia Irrigation District, a municipal corporation, being represented by its attorney James Leavy, and the defendant State of Washington being represented by E. P. Donnelly, Assistant Attorney General for the State of Washington; a jury having been waived, and place of trial at Spokane, Washington, having been consented to; and certain material facts having been stipulated into the record by the respective parties, and the Court having heard argument of counsel upon the issues herein, and having ruled upon the offer of further proof by the defendants, and the Court being fully advised in the premises;

And the Court having directed, that the issues of fact and law with regard to Parcel II herein

may be segregated from those of Parcels I and III in this action;

Now, Therefore, the Court hereby makes, with respect to Parcel II in this action, the following

Findings of Fact

I.

On December 23, 1952, the plaintiff United States of America, pursuant to Acts of Congress, instituted this proceeding by the filing of complaint in condemnation to acquire all right, title, and interest of the Columbia Irrigation District, a municipal corporation, defendant herein, in and to the lands hereinafter described, for public uses, for a river improvement for the purposes of navigation, flood control, and other purposes incident thereto, in connection with the construction and operation of the McNary Lock and Dam Project.

II.

On December 2, 1954, plaintiff United States of America filed herein an amended complaint in condemnation, thereby revising and describing the estate to be acquired as: Parcel II, consisting of:

All right, title, and interest of the Columbia Irrigation District in and to the lands in Parcel II, consisting of Segments F, G, H, J, K, L, P, Q, R, S, and T as described in Exhibit "A" attached hereto and made a part hereof.

III.

On March 31, 1953, the plaintiff United States of America acquired possession of the lands and

interests described in Parcel II herein by order of the Court granting right of possession in the plaintiff, entered March 18, 1953.

IV.

At or prior to the date of the commencement of this action, all of the lands described within Parcel II herein were owned by persons or corporations other than these defendants, and fee estates upon all of said lands have been acquired by the United States of America, by condemnation or direct purchase, from their said owners. At the time of commencement of this action and thereafter, defendant [76] Columbia Irrigation District, a municipal corporation, held no title, either legal or equitable, to the lands described as Parcel II herein or any part thereof. All of the lands described within said Parcel II were as of the commencement of this action, included within the boundaries of the defendant Columbia Irrigation District and had, prior to their acquisition by the United States of America, been subject of assessment by said District.

V.

At the time of the commencement of this action and thereafter, the defendant State of Washington held no title, either legal or equitable, in and to the lands described as Parcel II herein, or any portion thereof; the defendant State of Washington was then holder and obligee of irrigation district bonds issued by the Columbia Irrigation District, a muni-

municipal corporation organized and existing under the laws of the State of Washington.

From the foregoing Findings of Fact, the Court makes the following

Conclusions of Law

I.

The Court has jurisdiction of the parties and subject matter herein.

II.

The defendant Columbia Irrigation District, a municipal corporation, held no title or ownership in or to the lands herein designated as Parcel II as of the commencement of this action, and holds no compensable interest therein by reason of the acquisition of said lands by the plaintiff United States of America; that no compensation is due said defendant by reason of said taking.

III.

The defendant State of Washington held no title or ownership in or to the lands herein designated as Parcel II as of the [77] commencement of this action, and holds no compensable interest therein by reason of the acquisition of said lands by the plaintiff United States of America; that no compensation is due said defendant by reason of said taking.

IV.

All right, title and interest of the Columbia Irrigation District in and to the lands in Parcel II

consisting of Segments F, G, H, J, K, L, P, Q, R, S, and T as described in Exhibit "A" attached hereto should be held and confirmed to have vested in the United States of America.

Dated this 1st day of April, 1958.

/s/ SAM M. DRIVER,
Judge of the U. S. District
Court.

Presented By:

/s/ RONALD R. HULL,
Assistant U. S. Attorney. [78]

[Endorsed]: Filed April 1, 1958.

In The District Court of the United States, Eastern
District of Washington, Southern Division

Civil No. 765

UNITED STATES OF AMERICA,

Plaintiff,

vs.

3,479.73 ACRES OF LAND, more or less, in Benton County, Washington; COLUMBIA IRRIGATION DISTRICT, a municipal corporation, et al.,

Defendants.

JUDGMENT— Parcel II

The above cause having come on regularly for trial on February 17, 1958, the plaintiff appearing by its attorney, Ronald R. Hull, Assistant United

States Attorney, the defendant Columbia Irrigation District, a municipal corporation, appearing by its attorney, James Leavy, and the defendant State of Washington being represented by E. P. Donnelly, Assistant Attorney General for the State of Washington, and the Court having made and entered its Findings of Fact and Conclusions of Law herein, and being fully advised in the premises;

And the Court having directed that the issues of fact and law with regard to Parcel II herein may be segregated from those of Parcels I and III in this action;

Now, Therefore, It Is Ordered, Adjudged, and Decreed

1. At the time of the commencement of this action, the defendant Columbia Irrigation District, a municipal corporation, held no title or ownership in or to the lands herein designated as Parcel II, and holds no compensable interest therein by reason of the acquisition of said lands by the plaintiff United States of America; that no compensation is due said defendant by reason of said taking. [94]

2. At the time of the commencement of this action the defendant State of Washington held no title or ownership in or to the lands herein designated as Parcel II, and holds no compensable interest therein by reason of the acquisition of said lands by the plaintiff United States of America;

that no compensation is due said defendant by reason of said taking.

3. All right, title and interest of the Columbia Irrigation District, a municipal corporation, defendant herein, in and to the lands in Parcel II consisting of Segments F, G, H, J, K, L, P, Q, R, S, and T as described in Exhibit "A" attached hereto, are hereby held and confirmed to have vested in the United States of America.

Dated this 1st day of April, 1958.

/s/ SAM M. DRIVER,
Judge of the U. S. District
Court.

Presented By:

/s/ RONALD R. HULL,
Assistant U. S. Attorney. [95]

[Exhibit "A" attached hereto is the same as "Parcel II" set out at pages 19-52 of this printed record.]

[Endorsed]: Filed April 1, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL—(Par. 2)

Notice Is Hereby Given that defendant, Columbia Irrigation District, a municipal corporation, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Findings of Fact and Conclusions of Law and Judgment as to

Parcel II entered in this action on the 1st day of April, 1958.

LEAVY & TABER,

/s/ By JAMES LEAVY,

Attorneys for Appellant, Columbia Irrigation District, a municipal corporation. [111]

[Endorsed]: Filed April 30, 1958.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL—(Par. 2)

We, The Undersigned, jointly and severally, acknowledge that we and our personal representatives are bound to pay to United States of America, plaintiff, the sum of \$250.00.

The condition of this bond is that, whereas the defendant, Columbia Irrigation District, a municipal corporation, has appealed to the Court of Appeals for the Ninth Circuit by Notice of Appeal filed the 30th day of April, 1958, from the judgment of this Court entered April 1, 1958, if the defendant, Columbia Irrigation District, shall pay all costs adjudged against it if the appeal is dismissed or the judgment affirmed or such costs as the Appellate Court may award if the judgment is modified, then this bond is to be void, but if the defendant fails to perform this condition, payment of the amount of this bond shall be due forthwith.

[Seal]

COLUMBIA IRRIGATION

DISTRICT,

/s/ By JAMES LEAVY,

Defendant.

[Seal] FIDELITY and DEPOSIT COM-
 PANY, OF MARYLAND,
 /s/ By WENDELL P. BROWN,
 Surety—Attorney-in-Fact. [112]

Signed and acknowledged before me this 22nd
day of April, 1958.

[Seal] /s/ DUANE E. TABER,
Notary Public in and for the State of Washington,
residing at Pasco. [113]

[Endorsed]: Filed April 30, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that defendant, State
of Washington, hereby appeals to the United States
Court of Appeals for the Ninth Circuit from the
findings of fact and conclusions of law and judg-
ment as to Parcel II entered in this action on the
1st day of April, 1958.

/s/ JOHN J. O'CONNELL,
Attorney General.

/s/ E. P. DONNELLY,
Assistant Attorney General,
Attorneys for Defendant,
State of Washington. [116]

[Endorsed]: Filed May 13, 1958.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the originals filed in the above cause, called for in Appellant's Designation filed on May 7, 1958, except for item No. 3 therein, entitled, "Appearance of Columbia Irrigation District" which was not filed in this cause.

Date of Filing: 12/23/52. Title of Document:
Complaint for Condemnation.

Date of Filing: 12/2/54. Title of Document:
Amended Complaint for Condemnation; Record of
Proceedings at the trial.

Date of Filing: 4/1/58. Title of Document:
Findings of Fact and Conclusions of Law.

Date of Filing: 4/1/58. Title of Document: Judgment.

Date of Filing: 4/30/58. Title of Document:
Notice of Appeal (Columbia Irr. Dist.).

Date of Filing: 4/30/58. Title of Document:
Bond for costs.

Date of Filing: 5/7/58. Title of Document: Designation of Record with affidavit of service.

Date of Filing: 5/13/58. Title of Document:
Notice of Appeal (State of Washington).

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court at
Yakima in said district this 5th day of June, 1958.

[Seal] /s/ STANLEY D. TAYLOR,
Clerk of said Court.

[Endorsed]: No. 16047. United States Court
of Appeals for the Ninth Circuit. Columbia Irrig-
ation District, a corporation, Appellant, vs.
United States of America, Appellee. State of
Washington, Appellant, vs. United States of
America, Appellee. Transcript of Record. Ap-
peals from the United States District Court for
the Eastern District of Washington, Southern Di-
vision.

Filed: June 6, 1958.

Docketed: June 16, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
For The Ninth Circuit

No. 16047

COLUMBIA IRRIGATION DISTRICT, a cor-
poration, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATE OF WASHINGTON, Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS

The points upon which appellant will rely on appeal are:

I.

That the Court erred in directing in the "Findings of Fact" that the issues of fact and law with regard to Parcel II herein may be segregated from those of Parcels I and III in this action.

II.

That the Court erred in making and entering its "Conclusions of Law" numbered II and IV, reading as follows:

"II. The defendant, Columbia Irrigation District, a municipal corporation, held no title or own-

ership in or to the lands herein designated as Parcel II as of the commencement of this action, and holds no compensable interest therein by reason of the acquisition of said lands by the plaintiff, United States of America; that no compensation is due said defendant by reason of said taking.

“IV. All right, title and interest of the Columbia Irrigation District in and to the lands in Parcel II consisting of Segments F, G, H, J, K, L, P, Q, R, S, and T as described in Exhibit “A”, attached hereto, should be held and confirmed to have vested in the United States of America.”

III.

The Court erred in entering Judgment as to Parcel II in making the following quoted Judgment:

“At the time of the commencement of this action, the defendant, Columbia Irrigation District, a municipal corporation, held no title or ownership in or to the lands herein designated as Parcel II, and holds no compensable interest therein by reason of the acquisition of said lands by the plaintiff, United States of America; that no compensation is due said defendant by reason of said taking.

“All right, title and interest of the Columbia Irrigation District, a municipal corporation, defendant herein, in and to the lands in Parcel II consisting of Segments F, G, H, J, K, L, P, Q, R, S, and T as described in Exhibit “A”, attached

hereto, are hereby held and confirmed to have vested in the United States of America.”

LEAVY & TABER,

/s/ By JAMES LEAVY,

Attorneys for Appellant, Columbia Irrigation District, a municipal corporation.

[Endorsed]: Filed June 20, 1958. Paul P. O'Brien, Clerk.

[Note: The Statement of Points Filed June 27, 1958, by State of Washington, signed by John J. O'Connell, Attorney General, and E. P. Donnelly, Assistant Attorney General, is the same as set out at pages 87-89 of this printed record.]

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD ON APPEAL

Pursuant to Rule 17 (of the Rules of the United States Court of Appeals for the Ninth Circuit) the appellant, Columbia Irrigation District, hereby designates for inclusion in the records on appeal to the United States Court of Appeals for the Ninth Circuit, taken by Notice of Appeal filed April 30, 1958, the following portions of the record, proceedings, and evidence in this action:

1. The Petition for Condemnation without the attached exhibits.

2. The Amended Petition for Condemnation with exhibits.

3. The Record of Proceedings at the Trial.

4. The Findings of Fact and Conclusions of Law without the attached exhibits.

5. The Judgment with attached exhibits.

6. Notice of Appeal.

7. Bond for Costs.

8. Affidavit of Service.

9. Designation of Contents of Record on Appeal.

LEAVY & TABER,

/s/ By JAMES LEAVY,

Attorneys for Appellant, Columbia Irrigation District.

[Endorsed]: Filed June 20, 1958. Paul P. O'Brien, Clerk.

[Note: The Designation of Record on Appeal Filed June 27, 1958, by the State of Washington, signed John J. O'Connell, Attorney General, by E. P. Donnelly, Assistant Attorney General, is the same as set out at pages 89-90 of this printed record.]